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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/717,755 | 11/20/2003 | Graylin Patrick Barr | BETTS #7 | 8800 |
| 40992 | 7590 | 06/06/2005 | EXAMINER | |
| THOMAS R. LAMPE 1390 WILLOW PASS ROAD SUITE 1020 CONCORD, CA 94520 | | | COLLADO, CYNTHIA FRANCISCA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3618 | |

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/717,755 | | BARR ET AL. | |
| | Examiner | | Art Unit | |
| | Cynthia F. Collado | | 3618 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 1,6,8 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152). |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1,6,8 and 10 are objected due to the following:

In claim 6, recites "each of said clip segments having bifurcated clip end portions defining an open-ended, variable width slot" which sets fourth that there are two slots, but the disclosure teaches that there is only one slot. See also claims 1, 8 and 10 for similar objection. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller'544 (US Patent No 3,726,544). Miller'544 teaches a mud flap holder assembly for use with motor vehicles having a support member attachable to motor vehicle (see fig 2, element 26); and at least one mud flap support clip connected to said support (see fig 6, element 33), said at least one mud flap support clip having two clip segments extending downwardly from said support member, said clip segments having distal ends bifurcated portions forming slots (see claim objection to claim 1) extending from said distal ends

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and said clip segments defining a space there between (see lower portion of 33 on figure 6) for receiving the top portion of a mud flap with said clip segments disposed at opposed sides of the top portion (see figure 6) and with the at least one flap securement member positioned in the slots thereof at a predetermined location between said bifurcated portions, said slots being of variable width and said bifurcated portions converging below said predetermined location and forming a detent (see line 61 of column 2) for engaging and supporting said flap securement member, at least one of said bifurcated portions being flexible whereby a downward pulling force applied to the mud flap will cause flexing of the flexible at least one bifurcated portion and release of the mud flap from the mud flap holder assembly. (See lines 25-35 of column 1)

4. Referring to claim 3, Miller'544 teaches at least one mud flap support clip is of integral (see comments below) construction and formed of sheet metal. (See figure 6) for this clip corresponds to metal as set fourth in section 608.02 of the MPEP.

5. Regarding claim 3, note that Webster's collegiate Dictionary, 10th Edition defines "integral" as "formed as a unit with another part".

6. Referring to claim 4, Miller'544 teaches a support member is an elongated bar (see figure 4)

7. Referring to claim 5, Miller'544 teaches configurations of the slots in the clip segments are substantially the same (see fig 6, element 39 and the claim objection to claim 1)

8. Claims 6,9 and 10 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Moore et al'260 (US Patent No 3,700,260). Moore et al'260

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teaches a support member attachable to a motor vehicle with at least one mud flap support clip connected to said support member having a bifurcated clip segment forming a variable width slot open at one end (see figure 4, elements 18, 40 and 44), a mud flap securement bolt passing through the hole in the top portion of said mud flap positioned in said slot and frictionally engaged by said (see claim objection section) bifurcated clip segment to releasably retain said mud flap support clip until a pulling force applied to said mud flap attains a predetermined magnitude sufficient to cause mud flap support clip to release mud flap securement bolt and mud flap (see figure 4, elements 64 and 68), mud flap support clip includes bifurcated clip forming a slot, mud flap securement bolt positioned in slot (see figure 6 and the claim objection section).

9. Referring to claim 7, Miller'544 teaches the clip of integral (see comments below) construction and formed of sheet material (See figure 6) for this clip. The cross-hatching for reference #33 of figure 6 Corresponds to metal as set forth in section 608.02 of the MPEP.

10. Regarding claim 7, note that Webster's collegiate Dictionary, 10th Edition defines "integral" as "formed as a unit with another part".

11. Referring to claim 8, Miller'544 teaches slot of substantially identical configuration (see figure 6 and the claim objection to claim 8).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller'544 (US Patent No 3,726,544).

Miller'544 discloses the claimed invention of claim 12 except for the mud flap holder including a plurality of spaced mud flap support clips. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the integral clip separate, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). One would be motivated

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to include mud flap holder including a plurality of spaced mud flap support clips therefor if one portion becomes damaged the entire clip would not have to be replaced.

Allowable Subject Matter

14. Claims 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No 3,726,544 issued to Miller

US Patent No 3,700,260 issued to Moore et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571) 272-8315. The examiner can normally be reached on mon-fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CFC



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